Filed 8/20/13 P. v. Estes CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM ESTES, Defendant and Appellant.	C067917 (Super. Ct. No. 09F04718)

A jury convicted defendant William Estes of rape, assault with a deadly weapon, false imprisonment, and committing a lewd or lascivious act upon a child under the age of 14, finding true the allegations that defendant personally inflicted great bodily injury, used a deadly or dangerous weapon, and committed a sexual offense against two or more victims. The trial court found that defendant had a prior serious felony conviction and sentenced defendant to 340 years to life in state prison.

Defendant now contends (1) the trial court abused its discretion in admitting evidence, pursuant to Evidence Code section 1108, of a prior sexual offense,[1] (2) defense counsel was ineffective in failing to object to testimony regarding an uncharged act, (3) the trial court erred in denying defendant's motion to sever trial of the counts involving different victims, and (4) cumulative error requires reversal.

Defendant's contentions lack merit. We will affirm the judgment.

BACKGROUND

A

T.W. shared an apartment with her friend Robert in January 2009.[2] She met defendant in the computer center at her apartment complex. Defendant gave her his phone number and T.W. texted him.

T.W. saw defendant at the computer center again the next day. She had been fired from her job and defendant gave her a hug. He was "flirty" and "very touchy." T.W. told defendant she was "interested in somebody else," her friend Joshua.

The next morning, defendant offered to help T.W. look for a job. They drove around looking for places that were hiring. That night, T.W. ate pizza with Robert, Joshua, defendant and defendant's girlfriend Jennifer. T.W., Robert and Joshua left after 45 minutes. Defendant texted T.W. that he was upset they left so abruptly. T.W. invited defendant over and apologized.

The next day, defendant sent T.W. numerous text messages but she did not respond. Around 9:30 p.m., he texted T.W. that he wanted her to meet his mom, who worked at Comcast, to discuss the hiring process. T.W. was starting to get "really

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[1] Undesignated statutory references are to the Evidence Code.

[2] Because some of the witnesses have the same last name, we will refer to the lay witnesses by their first names for clarity.

creeped out" by defendant, but eventually agreed to meet him because she needed a job. Before she left, Robert set up T.W.'s phone so that all she had to do was push "send" to call him. T.W. took a pocket knife with her.

Meanwhile, defendant told Jennifer that T.W. needed a ride to the store to buy cheese. Defendant picked up T.W. wearing jeans, a green wind breaker and black gloves. They drove a short distance to defendant's old apartment because defendant said he needed something there. Defendant had a "Finding Nemo" key to the apartment and a 15- to 18-inch Maglite flashlight. The lights were off and defendant used the flashlight to illuminate the apartment.

Defendant asked T.W. to look in several places for a bag, but she did not find it. Defendant gestured for her to go ahead of him through the master bedroom door; as she did so, he hit her from behind on the left side of her face with a hard object. Defendant screamed about T.W. being rude on the night they ate pizza. He began ripping off her clothes and fondling her breasts. She blacked out. When she woke up on the floor, she struggled to get away, but defendant hit her and she blacked out again.

The next time T.W. woke up she was lying on her stomach with defendant on top of her. She saw a puddle of blood. T.W.'s hands were tied behind her back, there was a rope around her neck, and she was terrified she was going to die. The rope around her neck was affecting her ability to breathe, so defendant used a kitchen knife to cut the rope. Defendant buttoned up his pants and said he had to "clean up and get rid of the condom." When he came back, he still had the knife.

T.W. suggested they make up a story so defendant would not get in trouble. Defendant thought they could concoct a story about getting mugged. He told T.W. "[she] was dead" if she did not go along with the plan. Fearing for her survival, T.W. falsely assured defendant she would "go along with anything he wanted." He described a plan involving a black male mugger, and wanted T.W. to say that defendant had a seizure, which would explain why he did not have any injuries.

Defendant helped T.W. up. She was very dizzy and could not walk very well. Defendant said he had a gun. He called Jennifer and informed her they were at their old apartment and they had been mugged. Defendant also called 911 and told the operator he and his "best friend" T.W. had been mugged and were hurt. He claimed not to know where they were and said to trace the call.

Defendant tried to "weave" his hands behind T.W. so it would look like he was also tied up. He said he would fake a seizure and she would need to "start talking."

Jennifer showed up and untied T.W. and defendant. Jennifer noticed the string was like the string she and defendant used when they moved from their old apartment.

Robert called, and T.W. "freaked out on him," crying so much he could barely understand her. T.W. subsequently apologized to Jennifer, pulled out her pocketknife and began stabbing defendant, yelling, "He raped me, he raped me." Officer Ethan Hanson arrived and pulled T.W. off of defendant. She was crying uncontrollably.

T.W. was transported to UC Davis Medical Center. She had fractures along her nose, under her left eye and on her left cheek, requiring facial surgery. She also had a broken sternum, a black eye, a concussion, chipped teeth, and red marks around her wrists and neck. T.W. described the assault to the physician assistant and nurse practitioner performing the sexual assault exam. The physician assistant opined that T.W.'s injuries were consistent with her description.

Defendant told Officer Hanson they had been at the apartment getting a futon for a friend. He said they were assaulted by an unknown assailant. Defendant was taken to the hospital to treat two puncture wounds in his chest. Officer Hanson found nylon kite string outside the apartment.

Officer Wesley Nezik interviewed defendant in the emergency room at the hospital. Defendant said he had been taking T.W. to the store to buy cheese, and they stopped at his old apartment because T.W. wanted his old futon. The door to the apartment was unlocked, and when he went inside he felt "something push him." He fell

to the ground, thought he saw a black male on top of T.W., and did not remember anything after that. He denied knowing why T.W. stabbed him, and denied having sex with her. Defendant claimed not to know anything about a condom wrapper found in the apartment.

CSI Officer Janelle Gurnee processed the crime scene. She found blood on the carpet and walls in one of the bedrooms, a carving knife with blood on it, a Maglite, a torn condom wrapper, and a blue "Finding Nemo" key with an orange fish on it. Officer Gurnee also found string similar to the string found by Officer Hanson. The blood samples taken from the wall, carpet, knife and Maglite matched T.W.'s DNA profile. The condom wrapper was tested and the major contributor matched T.W.'s profile, and the minor contributor was consistent with defendant's profile. In addition, carpet samples from the bedroom had "visualized sperm" that matched defendant's DNA profile.

Jennifer testified that after she and defendant moved to their new apartment, she kept a "Finding Nemo" key to their old apartment. Defendant noticed the key prior to the assault and asked why she still had it. She said she kept it because she liked it.

Defendant gave Officers Buchanan and Hanson accounts similar to the one he gave Officer Nezik. He denied using a key to open the door, denied having a "Finding Nemo" key for the apartment, denied using condoms, and denied assaulting or raping T.W.

Detective Brian McDougle extracted call logs and text messages from T.W.'s cell phone and found no messages from T.W. asking defendant to take her to the store for cheese. He found an exchange where defendant indicated to T.W. that he would rather be in her company than with his "friend" Jennifer, and T.W. responded in a noncommittal manner, causing defendant to text, "You don't really like being with me, do you, honest?" Subsequently, T.W. texted that she liked defendant "as a friend, and that's it." She advised defendant that she and Josh had "something going on." Defendant asked to see her outside, and when she questioned why, he said he wanted to take her to pick up a

job application from his mother's house. T.W. responded, "Okay. Just give me ten minutes and I'll be over there or come get me." There were three calls from T.W. to defendant, and 27 calls from defendant to T.W.

B

Jennifer's brother Eric had a friend named B.L. B.L. met defendant at the home of Eric's parents. Detective Andrew Newby became aware of B.L. while investigating the assault on T.W.

On December 30, 2008, when B.L. was 13, she received a text from Eric's phone that said, "Do you want to hang out?" She replied that she did. She received a text saying that she should go to the park and defendant would pick her up. When defendant arrived at the park, B.L. was surprised to see that Eric was not with him. But she agreed to go with defendant because she thought he was taking her to Eric.

Defendant said he had to run some errands. He took B.L. to In-N-Out Burger, where she saw him talk with a blond girl who was "on the heavy side." After talking to the girl for awhile, defendant got back in the car and drove to Papa John's pizza restaurant.

Defendant claimed they were there to pick up Eric from a job interview. He told B.L. to get in the backseat so that Eric could sit in front. When she complied, however, defendant got into the back also. He pulled out a knife, placed it against her neck, and told her to take off her clothes or he would kill her. B.L. removed her pants and underwear, and defendant "started to . . . rub his penis around [her] vagina," asking her, "Do you like my big dick?" B.L. screamed "no" and "stop," but defendant put his penis in "a little bit," at which point she felt a sharp pain. She screamed at defendant to get off, but he kept "trying to push it in." Eventually defendant said, "I feel stupid," and told her that her boyfriend was "going to do this to [her]."

Defendant and B.L. got in the front seat. He threatened to kill her if she told anyone. Defendant dropped her back at the park. She did not call the police, and continued to respond to texts from defendant after that day, because she was afraid.

About two days later, defendant used Eric's cell phone and sent a text to B.L. asking her to come over to defendant's apartment, where Eric was staying. B.L. and Eric had been fighting and she wanted to make up with him. She assumed defendant would not do anything to her with Eric there. B.L. had not informed Eric about what defendant did to her.

At the apartment, the three played board games and listened to music. But B.L. and Eric had a disagreement during the game and stopped talking. Defendant asked B.L. to go into the bedroom so defendant could talk to Eric about the argument. Defendant appeared to be helping them, so B.L. complied. While B.L. was in the bedroom, defendant told Eric to go to the gym and wait there while defendant tried to calm B.L. down. Eric left.

B.L. heard Eric leave. Defendant came into the room and tried to hand her a condom, but she told him she did not want it. Defendant pulled out a knife, held it to B.L.'s throat and ordered her to take off her clothes. She complied. Defendant began "playing with [her] boobs and sucking on them." He opened the condom, put it on, and inserted his penis into B.L. Again, he said he felt stupid and stopped. He told her to get dressed and warned her not to tell anyone or he would kill her.

Defendant called Eric and said B.L. was calmed down. When Eric returned, B.L. was on the couch and seemed "upset and scared." Although Eric told a defense investigator that he never went to the gym and that B.L. seemed fine, that was because his sister Jennifer was still seeing defendant and Eric did not want to hurt her.

When Jennifer arrived home from work, she found defendant, Eric and B.L. cleaning the apartment. The sheets were not on the bed and defendant said he was doing laundry. She saw a purple condom wrapper on the floor of the bedroom.

About seven to 10 days later, B.L. met Eric at his parents' house and appeared "terrified." B.L. told him that she was putting her life on the line by telling him and that defendant would come after her, but defendant had raped her while Eric was at the gym.

A law enforcement review of B.L.'s phone records revealed that she began receiving text messages from defendant on December 30, 2008, and they exchanged approximately 600 messages in the next few days. Defendant initiated around two-thirds of the messages. Phone records led law enforcement to Victoria, the heavier blonde woman B.L. described.

Victoria knew defendant and Jennifer. They discussed becoming roommates, and one conversation with defendant occurred at In-N-Out Burger. At the time, Victoria saw someone in the back of defendant's car.

Victoria's father persuaded her not to move in with defendant and Jennifer. When she informed defendant she was not moving in, defendant pulled out a knife. Victoria was "surprised," but it was "not . . . a threatening knife" so she took it out of his hands and threw it. She left in her car and called Jennifer to tell her what happened. Jennifer said she would take care of it and asked Victoria not to call the police. When Jennifer returned home from work, she found blood on the wall and a bloody knife. Defendant had a cut on his arm and finger.

Detective Newby obtained recordings of phone calls defendant made while he was in jail. Defendant told Jennifer there was a knife under the mattress and to put it back in the kitchen. He also told Jennifer to get rid of his cell phone. She complied because she was afraid of him.

The jury convicted defendant of the following: rape of T.W. (Pen. Code, § 261, subd. (a)(2) -- count one), finding true the allegations that defendant personally inflicted great bodily injury (Pen. Code, §§ 667.61, former subd. (e)(3), 12022.8), personally used a deadly or dangerous weapon (a flashlight) (Pen. Code, §§ 667.61, former subd. (e)(4), now subd. (e)(3), 12022.3, subd. (a)), and committed a sexual offense against two or

more victims (Pen. Code, § 667.61, former subd. (e)(5), now subd. (e)(4)); assaulting T.W. with a deadly weapon (a flashlight) (Pen. Code, § 245, subd. (a)(1) -- count two), finding true the allegation that defendant personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)); false imprisonment of T.W. (Pen. Code, § 236 -- count three); committing a lewd or lascivious act upon a child under the age of 14 (B.L.) (Pen. Code, § 288, subd. (a) -- counts four through eight), finding true the allegations that he used a deadly weapon (a knife) (Pen. Code, § 667.61, former subd. (e)(4), now subd. (e)(3), 12022.3, subd. (a)) and committed a sexual offense against two or more victims (Pen. Code, § 667.61, former subd. (e)(5), now subd. (e)(4)).

The trial court found that defendant had a prior serious felony conviction and sentenced him to 340 years to life in state prison.

DISCUSSION

I

Defendant contends the trial court abused its discretion in admitting evidence, pursuant to section 1108, of a prior sexual offense. He also claims admission of the evidence violated due process.

Section 1108 permits " ' "consideration of . . . other sexual offenses as evidence of the defendant's disposition to commit such crimes, and for its bearing on the probability or improbability that the defendant has been falsely or mistakenly accused of such an offense." ' " (*People v. Soto* (1998) 64 Cal.App.4th 966, 984.) Over defendant's objection, the trial court ruled the prosecutor could introduce evidence of defendant's 2005 felony conviction for unlawful sexual intercourse with a minor. The parties then stipulated that the jury would be told the following: "On April the 22nd of 2005, the defendant, William Estes, was convicted of a felony conviction of Penal Code [s]ection 261.5, unlawful sexual intercourse with a minor." That was the full extent of the other crime evidence presented to the jury.

Regarding defendant's due process contention, the California Supreme Court rejected such a challenge to section 1108. (*People v. Falsetta* (1999) 21 Cal.4th 903, 916-922 (*Falsetta*); *People v. Loy* (2011) 52 Cal.4th 46, 60-61 (*Loy*) [declining to reconsider *Falsetta*].) We are bound by those decisions. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

As the California Supreme Court explained in *Falsetta*, the trial court's discretion to exclude evidence under section 352 saves section 1108 from a due process challenge. (*Falsetta, supra*, 21 Cal.4th at 917.) Thus, we turn to defendant's contention that the trial court abused its discretion under section 352. In considering whether to admit evidence of a prior sex offense, "trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense." (*Falsetta, supra,* 21 Cal.4th at p. 917.) The trial court's ruling under sections 352 and 1108 is subject to review for abuse of discretion. (*Loy, supra,* 52 Cal.4th at p. 61; *People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.)

Section 1108 affects the balancing performed under section 352 because the admission of evidence of other sexual offenses to show character or disposition is no longer treated as intrinsically prejudicial or impermissible. (*People v. Soto, supra*, 64 Cal.App.4th at p. 984.) The Legislature has determined that in sex cases, this evidence is particularly and uniquely probative. (*Loy, supra*, 52 Cal.4th at pp. 61, 63.) The presumption is in favor of admission; it cannot be excluded under section 352 unless its probative value concerning the defendant's disposition to commit the charged sexual

offense is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice. (*Id.* at p. 62.)

Here, because defendant was convicted of the prior sexual offense, there was little risk the jury would convict him in this case merely to punish him for the prior act. Moreover, because his commission of the prior offense was already established, he bore no new burden of defending against the charge and there was little danger of confusing the issues or requiring a mini-trial to determine defendant's guilt in connection with the previous crime. (*Loy*, *supra*, 52 Cal.4th at p. 61.) The date of the prior offense was not remote, and no inflammatory details were provided about the underlying facts. Indeed, the evidence was presented in a brief stipulation setting forth only the date of conviction and the specific offense. Under the circumstances, the trial court did not abuse its discretion in admitting the evidence. (*Id*. at p. 62.)

II

Defendant next contends defense counsel was ineffective in failing to object to testimony regarding an uncharged act. He claims his trial counsel should have objected to Victoria's testimony regarding defendant's display of a knife.

To establish ineffective assistance of counsel, a defendant must show (1) counsel's performance was below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance prejudiced defendant. (*Strickland v. Washington* (1984) 466 U.S. 668, 688, 691–692 [80 L.Ed.2d 674, 694, 696] (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 216–217 (*Ledesma*).) " 'Surmounting *Strickland's* high bar is never an easy task.' [Citation.]" (*Harrington v. Richter* (2011) 562 U.S. ____, ____ [178 L.Ed.2d 624, 642] (*Richter*).) "In order to prevail on [an ineffective assistance of counsel] claim on direct appeal, the record must affirmatively disclose the lack of a rational tactical purpose for the challenged act or omission." (*People v. Ray* (1996) 13 Cal.4th 313, 349.) There is "a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional

assistance. [Citation.]" (*Richter, supra,* 562 U.S. ___ [178 L.Ed.2d at p. 642].) The defendant must demonstrate that counsel made errors so serious that he or she was not functioning at the level guaranteed the defendant by the Sixth Amendment. (*Ibid.*)

Even if the challenged evidence was inadmissible, we cannot say that counsel's failure to object reflected substandard performance depriving defendant of a fair trial. "Whether to object to inadmissible evidence is a tactical decision; because trial counsel's tactical decisions are accorded substantial deference [citations], failure to object seldom establishes counsel's incompetence." (*People v. Hayes* (1990) 52 Cal.3d 577, 621.) This case is no exception. As the People suggest, trial counsel may have decided not to object to Victoria's testimony about defendant's knife because an objection would have unnecessarily highlighted the testimony and made it seem more significant. (*People v. Williams* (1997) 16 Cal.4th 153, 215.) This is especially true here, given that Victoria did not appear to feel threatened by defendant and easily took the knife away from him.

In any event, defendant has not met his burden of establishing that defense counsel's failure to object prejudiced the outcome. To show prejudice, "[i]t is not enough 'to show that the errors had some conceivable effect on the outcome of the proceeding.' " (*Richter, supra,* 562 U.S. at p. ___ [178 L.Ed.2d at p. 642].) Defendant must show a reasonable probability that he would have received a more favorable result had counsel's performance not been deficient. (*Strickland, supra,* 466 U.S. at pp. 693–694 [80 L.Ed.2d at pp. 697-698]; *Ledesma, supra,* 43 Cal.3d at pp. 217–218.) "A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Strickland, supra,* 466 U.S. at p. 694 [80 L.Ed.2d at p. 698].)

Here, both victims positively identified defendant as their assailant. Their testimony was supported by other witnesses, text messages, forensic evidence and T.W.'s significant injuries. It simply is not reasonably probable the jury would have reached a more favorable verdict had defense counsel objected and the evidence been excluded.

III

Defendant claims the trial court erred in denying his motion to sever trial of the counts involving different victims (T.W. and B.L.). He contends reversal is warranted because the error is of constitutional magnitude and is not harmless beyond a reasonable doubt.

Penal Code section 954 provides that "[a]n accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more accusatory pleadings are filed in such cases in the same court, the court may order them to be consolidated." The count charging rape of T.W. and the count charging lewd and lascivious conduct of B.L. involved the same class of crimes for purposes of Penal Code section 954 and were properly joined in the accusatory pleading. (*People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1112-1113.)

Where, as here, the statutory requirements for joinder are met, severance can be predicated only on a clear showing of prejudice. " '[I]n the context of properly joined offenses, "a party seeking severance must make a *stronger* showing of potential prejudice than would be necessary to exclude other-crimes evidence in a severed trial." ' [Citations.]" (*People v. Soper* (2009) 45 Cal.4th 759, 774 (*Soper*).)

Moreover, "the method utilized to analyze prejudice is itself significantly different from that employed in reviewing a trial court's decision to admit evidence of uncharged misconduct. . . . [A]mong the 'countervailing considerations' present in the context of severance -- but absent in the context of admitting evidence of uncharged offenses at a separate trial -- are the benefits to the state, in the form of conservation of judicial resources and public funds. [Citation.] . . . [T]hese considerations often weigh strongly against severance of properly joined charges." (*Soper, supra,* 45 Cal.4th at p. 774.) The first consideration in reviewing the trial court's decision to consolidate cases is whether

the evidence in each case would have been cross-admissible in hypothetical separate trials. If so, "that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify" joinder of the charges. (*Id.* at p. 775.) We review the trial court's decision on a motion for severance of counts for abuse of discretion, in light of the information available to the trial court at the time the ruling was made. (*People v. Ochoa* (1998) 19 Cal.4th 353, 408, 409.)

Defendant relies on his earlier argument that section 1108 is unconstitutional, and maintains that the evidence against the different victims would not otherwise have been cross-admissible under section 1101 to show such things as identity, modus operandi, or sexual proclivities. But, as previously discussed, section 1108 is not unconstitutional. Therefore, the sexual offenses would have been cross-admissible unless exclusion was mandated under section 352. (*Falsetta, supra,* 21 Cal.4th at pp. 916-917.) The problem of confusing the jury with collateral matters would not arise. (*People v. Bean* (1988) 46 Cal.3d 919, 938–939.) Nor would it have created an undue consumption of time. Neither sexual offense was more inflammatory than the other. Although one involved violence, the other involved molesting a child, and both crimes displayed predatory behavior. Because the evidence would have been cross-admissible, any inference of prejudice has been dispelled. (*Soper, supra,* 45 Cal.4th at p. 775.)

Defendant cites *Bean v. Calderon* (9th Cir. 1998) 163 F.3d 1073, in which the Ninth Circuit Court of Appeals found erroneous the joinder of two murder charges. The evidence on one murder charge was much stronger and was not cross-admissible, but the jury had been led to believe otherwise by the prosecutor's closing argument and jury instructions, tainting the jury's verdict. (*Id.* at pp. 1075-1076, 1083-1085.) Here, however, the evidence in both cases was strong. And unlike *Bean*, where the court was concerned that evidence of a non-cross-admissible prior murder led the jury to infer criminal propensity, the Legislature has expressly authorized that evidence of sexual misconduct with another victim may be used to create an inference of criminal propensity

under section 1108. Because defendant's trial was not prejudiced by joinder, no fundamental unfairness resulted.

Even though the trial court did not abuse its discretion in denying the severance motion, " 'we look to the evidence actually introduced at trial to determine whether "a gross unfairness has occurred [from the joinder] such as to deprive the defendant of a fair trial or due process of law." ' [Citations.]" (*People v. Thomas* (2012) 53 Cal.4th 771, 800-801.) In this case, there is no evidence that defendant expressed a desire to testify in one case but not the other, and no evidence that the trial court's refusal to sever the counts quashed such a desire. The record does not show any indication of improper reliance on the evidence supporting the counts involving T.W. for conviction of the counts involving B.L., or vice versa. The evidence in both cases was strong, both victims positively identified defendant as the perpetrator, and both were supported by corroborating evidence. Defendant has not demonstrated that any actual prejudice from an alleged spill-over effect of such counts actually resulted from the joinder of the charges for trial. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1318.) Defendant fails to show that denial of severance deprived him of a fair trial. (*People v. Thomas, supra,* 53 Cal.4th at p. 801.)

IV

Defendant contends the cumulative error requires reversal.

"[A] series of trial errors, though independently harmless, may in some circumstances rise by accretion to the level of reversible and prejudicial error." (*People v. Hill* (1998) 17 Cal.4th 800, 844–845.) This is not such a case. "[N]o serious errors occurred that, whether viewed individually or in combination, could possibly have

affected the jury's verdict." (*People v. Martinez* (2003) 31 Cal.4th 673, 704; *People v. Valdez* (2004) 32 Cal.4th 73, 128.)

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

RAYE, P. J.

HOCH, J.